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CASE & COMMENT

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Amos M. Thayer

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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Amos M. Thayer.

Among the distinguished judges whom western New York is proud to have furnished to other states and the nation is Judge Amos M. Thayer, of the United States Circuit Court of Appeals for the Eighth Circuit. Judge Thayer is a native of Chautauqua county, New York, where he was born October 10, 1841. He was educated in his native state, and was graduated from Hamilton College, at Clinton, N. Y., in June, 1862, receiving the philosophical honor. Immediately afterward (in July, 1862) he entered the Union army as lieutenant in the 112th New York Volunteers. In October, 1862, he was transferred to the United States signal corps, and served with that organization to the end of the war. He successively attained the rank of first lieutenant, brevet captain, and brevet major in the United States signal corps. On August 9, 1865, he resigned his commission. In February, 1866, he settled in St. Louis, Mo., where he still resides. He was admitted to the bar in the city of St. Louis on March 3, 1868. Eight and one-half years after his admission to the bar, that is, in November, 1876, he was elected judge of the circuit court of the city of St. Louis, constituting the eighth judicial circuit of the state. He was re-elected to the same office for a second term in November, 1882. After a little more than ten years' service in the state court Judge Thayer was appointed on February 24, 1887, United States district judge for the eastern district of Missouri, and on August 9, 1894, was appointed United States circuit judge for the eighth judicial circuit, which office he still holds.

Judge Thayer has had in an exceptional degree a judicial career. For more than twenty-two years he has been continuously engaged in judicial service in the state and Federal courts. During the period of his service in the United States circuit court of appeals he has written more than 250 opinions.

The degree of LL. D. was conferred upon Judge Thayer in 1893 by Hamilton College, his alma mater.

Informing Accused of the Cause of Arrest.

There is some diversity of opinion as to the duties of an officer and as to the exact order of procedure in making an arrest for crime. In some states his duties in making an arrest are defined by statute, requiring him to inform the defendant that he acts under authority of a warrant, and also to show the warrant if required.

In the case of State v. Taylor (Vt.) 42 L. R. A. 673, in a note to which the authorities on the question are collated, it was held that the exhibition of a warrant or a statement of the grounds of arrest could not be demanded by the accused before submitting to the officer, although he might make such demand immediately after the arrest.

The general rule seems to be that on arresting a person who is caught in a criminal act or taken in hot pursuit, or when it is certain that he already knows the officer's pur-

pose, or prevents the officer from informing him thereof, it is not necessary for the officer to give information before making the arrest, but that in other cases the cause of arrest should be stated.

Another Rebuke to Injustice.

The highhanded and unprincipled robbery of citizens by means of arbitrary assessments has met with another needed rebuke from the Supreme Court of the United States in Dewey *v.* Des Moines, 172 U. S. —. In that case there was an attempt to impose upon a nonresident owner of real estate a personal liability for a street assessment levied on abutting property when the amount of the assessment exceeded the entire value of the property. The state statutes authorized the assessment, and provided for the personal liability of the owner of the property. But this decision holds that the statute is unconstitutional, and the assessment is an attempt to take property without due process of law, when the property owner is a nonresident. The case does not decide anything with respect to the validity of the statute as affecting residents of the state. But even as to them, when the question arises, the statute must be condemned as utterly repugnant to constitutional right and to the principles declared in the recent case of Norwood *v.* Baker, 172 U. S. 269. People have become so accustomed to the abuses of the system of local assessments that their sense of justice in respect to them has become calloused, and they have overlooked the fact of the repugnancy of many such assessments to constitutional guaranties. The decision in Norwood *v.* Baker is the beginning of a revolution in the matter of local assessments.

The Vilest of Libels.

A righteous man who does not swear must be moved by wellnigh irresistible impulse to use violent language when he reads in an American magazine, coupled with the statement that "an English judge cannot be bought at any price," the utterly infamous allegation that "in America judges and juries are bought at almost any price." This is the language of J. Alfred Kinghorn Jones in the March "Arena." Whether the maggot of suspicion has eaten out the soundness of his brain, or whether he knows the falseness of his damnable accusation, but makes it with some venomously sensational purpose, is uncertain.

The integrity of the judges is best known to the lawyers who practise before them. Here in the east, at least (and we have no right to suppose that it is different in the west), a defeated lawyer, however exasperated by an adverse decision, and however sure he may be that it is unsound, almost never suspects that it could be due to corruption. That is the supreme proof. In the light of it this J. Alfred Kinghorn Jones, by his brazen insult to the courts, has pilloried himself.

Criminal Liability for Another's Acts.

The question of criminal or penal liability of a person for the criminal acts of an employee, partner, or other representative is one of conflict and difficulty. The authorities on the subject (which are collected in a note in 41 L. R. A. 650) are by no means uniform. It may be said to be a fairly general rule that one person shall not be liable in a criminal or penal proceeding for wrongful acts of others the commission of which he did not order, procure, or induce, or to which he was not an accessory. Yet this rule is by no means universal. The most common exceptions to it are those relating to the wrongful sales of intoxicating liquors. But there are other instances, like those of gaming or the maintenance of nuisances. In most cases where a person is held liable for criminal acts done by his servant or other representative without his knowledge or consent the offense is committed within the scope of the business committed to such representative, and is one which it seemed by no means unlikely that he might commit. It ought not to be the policy of the law to punish one person for the criminal act of another except when the former had some reason to expect its commission and some power to prevent it. But when a man puts another in charge of a business in the conduct of which there are peculiar opportunities and temptations to violate the law, it is not unreasonable to hold him responsible, even criminally, if the agent carries on the business unlawfully. The question of such liability is in the main a question of the intent of the statutes. They may be, and some of them are, so worded as to charge the proprietor beyond question with full responsibility—criminal as well as civil—for all the acts done in the course of his business by those whom he puts in charge of it.

The Death Penalty.

The unmistakable increase of sentiment against putting criminals to death seems likely to cause eventually the abolition of the death penalty, although a proposed law to that effect has been recently defeated in New York. There are many people who intemperately attack the existing law and declare that punishment by death is nothing less than legalized murder. They vehemently denounce it as *per se* barbarous and wicked under all circumstances. Such sentimentalists do not reason well. They ignore the fundamental law that gives society the right of self-defense, and therefore justifies any punishment of criminals that may be necessary to prevent crime. But the great question for reasoning men to decide respecting the death penalty is the question whether or not such a penalty is in fact necessary to prevent murder. If it is, the state should enforce it; if it is not, that penalty ought to be abolished. The Albany Law Journal of February 18, 1899, gives some facts as presented to a Massachusetts legislative committee by George L. Patterson of Cambridge, which indicate that the experiment of abolishing the death penalty in Michigan, Rhode Island, Wisconsin, Maine, Holland, and Portugal, has in every instance resulted, not in the increase, but in the decrease, of crime. If those statistics are reliable the argument for abolishing the death penalty is very strong. Certainly the state has no right to take the life of a citizen unless that extreme penalty is demanded for the public protection. But the whole question turns, not on any abstract theory of the sacredness of life, but on the practical necessity of capital punishment to protect the people against murder. If a careful investigation of the results of abolishing the death penalty in certain states and countries shall show that after a fair trial for a considerable time murders have not increased, the question would be substantially settled in favor of a more humane mode of punishment. But, on the other hand, if it should appear that murders increase when the death penalty is abolished, there would be no valid argument for its abolition.

Equal Rights of Women as Criminals.

A proposed law to exempt female murderers from capital punishment is fitly characterized by the New York Law Journal as "indefensible in principle and extremely vicious in policy." It springs in part from a maudlin chivalry, and in part from the notion that women have not sufficient mental and moral development to be fully responsible for their crimes. Advocates of the political equality of women get into a deliciously absurd position when they demand an exemption of female criminals from the punishment that they would suffer if they were men.

Using Pardons to Abrogate Law.

A persistent but futile attempt was recently made to get Governor Roosevelt to annul a law of the state of New York under the guise of exercising the pardoning power when there was no legitimate basis for its exercise. The New York statute expressly declares that the punishment for murder in the first degree shall be death, and makes no exception of women. Yet people who do not like the law made a determined effort to get Governor Roosevelt to override it by sparing the life of a murderess merely because of her sex. The plainly declared purpose was to get him to annul the law so far as it applies to women. But the governor could not yield to this demand without a misuse, if not a clear usurpation, of power. The pardoning power of the governor is not legislative. Its exercise is properly based on the special facts of a particular case when they show that guilt is doubtful or is so mitigated that the punishment imposed is excessive. For the governor to pardon all criminals by wholesale, without regard to their guilt, would be a clear usurpation of power. It would be none the less so for him to abolish capital punishment during his term by adopting a general rule to grant a pardon or commute the sentence in every capital case. The same usurpation would be shown by interposing to prevent the execution of the law in every case where murder is committed by a woman. This would not be a proper exercise of executive clemency; it would be in effect a repeal of the statute by the arbitrary will of the governor. If the law is too severe, it is for the legislature, and not for the governor, to change it.

Irresponsibility of Collecting Bank.

An extreme and seemingly unjust application of the doctrine which exempts a bank from liability for mistakes of a reputable notary employed by it is made in the recent case of First National Bank *v.* German Bank

(Iowa) 78 N. W. 195. It holds that a collecting bank which puts an inland draft for protest into the hands of its assistant cashier, who is a notary public, is not liable for his negligent failure to give the notice required to hold an indorser. Here the bank charged with the duty to give the indorser notice of the dishonor of the draft, which could be given by one of its own employees, escapes all liability by directing the employee to protest the draft and give the notices in his capacity as a notary, although protest was not necessary. The statutes of the state recognize the giving of notices as part of the duty of a notary when protesting paper, and that might be a reason for exempting the bank from liability for his negligence if it had been obliged to employ a notary. But why the bank should escape liability for the negligence of its own employee in doing the very act which the bank was charged with the duty of doing, merely because it voluntarily told him to act as a notary in doing the work, is not very clear. The case does not show who took the fees for this notarial service. But, if the bank took them as its own profits, as there may be room to suspect, we should have the peculiarly interesting situation of an employer's profiting from the service of his employee and at the same time escaping all responsibility for it. If that was not the case here, it is certainly common enough for banks to have their protesting done by their own employees who do the work of notaries as part of their regular employment in the bank, and are not allowed to have any interest in the notarial fees which they earn, but which are all taken as earnings or profits of the bank business. In such cases the rule that the bank is not liable for the negligence of the notary is absurd enough to be a humor of the law.

Enforcing a Contract between Others.

The vexed question when a party may sue upon a promise made for his benefit to a third party, which, as was recently said by a judge of the court of appeals, has been for more than two hundred years under discussion by the courts of England and this country, is made the topic for an address by Hon. Joseph F. Daly, at the dinner of the society of medical jurisprudence. He says: "I am moved to propose the formation by you of another society,—say of 'surgical jurisprudence,'—not to concern itself with the profession which operates upon diseased human members or pernicious growths of the human system, but having for its object the cutting down deep through certain growths upon our legal system and removing obstructions to the free circulation of justice." The doctrine of Lawrence *v.* Fox, which allowed a person to sue upon a contract made for his benefit with a third party, has been limited, modified, or repudiated in a great number of cases and approved in others, until as will be seen by examining the authorities in the note to Jefferson *v.* Asch (Minn.) 25 L. R. A. 257, there is a hopeless disagreement in the courts on the subject. The difficulty in which the courts have floundered is to avoid the common-law rule that a contract can be enforced only by a party to it or an assignee. But a suggestion in Judge Daly's address meets this difficulty by saying that "the designation of the beneficiary in the contract is the most formal of assignments — an assignment of which the debtor has notice, and to which he assents, giving the beneficiary a right which, under Lawrence *v.* Fox, is irrevocable. It is equivalent to an accepted order to pay." While Judge Daly thinks it is hardly to be expected that at this late day the courts will go back to the root of the difficulty and disturb so much weighty law that has grown about the subject, he says: "But if an argument were needed to support the view that it is better to have the law right than to leave it settled, it is found in the fact that after two centuries of legal pronouncement plain business men, left to their own sense of propriety, are making every day, as they made in this case, contracts which they know violate no moral or statute law and which they believe and intend to be enforceable, but which cannot be enforced because of some judicial construction of common-law rules." His conclusion is "that infinitely more private and public loss—loss to suitors in pocket and to courts in time—has been caused by the disposition to limit the doctrine of Lawrence *v.* Fox than would ever have been caused by the most liberal extension of it." He favors "a short enactment providing that where in any contract a benefit is reserved to or for a person named or described in it he shall be entitled to sue upon it without other proof of interest."

When parties explicitly agree for a benefit to a third person, the natural conclusion is that they intend to confer upon such person a valid, enforceable right. It is the business of courts to enforce contracts which are fairly

made, unless they violate statutes or public policy. But there is no rule of statute or of public policy against the enforcement of a contract by one for whose benefit it was made. The refusal of the courts to enforce such contracts is in some sense arbitrary, although it is based, of course, on their supposed inability to grant relief. The common-law rule that only parties or assignees can enforce a contract is a rule of common sense when applied to prevent strangers from intermeddling. But it is misapplied when it denies the enforcement of the right which the contract expressly created.

Payment for Shares of Stock with Property.

One of the most unsatisfactory parts in the law of corporations as it stands at present is that of the payment for shares of stock by transfers of property. The decisions on the subject are far from harmonious. Many of them, like that of Kelly v. Fourth of July Mining Co. (Mont.) 42 L. R. A. 621, hold that good faith in the valuation put upon property for which stock of a corporation is issued is all that is demanded by the law which allows the issuance of stock for property to the amount of its value. On the other hand, it is held, in Van Cleve v. Berkey (Mo.) 42 L. R. A. 593, that the property accepted in payment for stock must be in fact a fair equivalent for the money subscribed, and that the belief of the stockholder that the property was equal in value to the par value of the stock will not relieve him from liability on his subscription as against those who have given credit to the company on the faith of its capital stock, if in point of fact the property is not of such value. It is unquestionable that great frauds have been committed in many instances by the nominal payment for shares of stock by turning over property at a grossly exaggerated or mythical value. When it can be shown that the property was intentionally overvalued the courts readily agree that the payment will not be held valid as against creditors of the corporation, but the chief difficulty arises where such fraud cannot be shown, but where the property was nevertheless overvalued. The immunity of shareholders from personal liability being a statutory privilege which, as an editorial in 32 American Law Review, 291, clearly points out, is granted them on condition that they provide "either in money or money's worth a joint-stock capital or fund which shall stand in the place of the personal liability under which they would otherwise stand to their common creditors as joint undertakers or partners," is dependent upon their full compliance with that condition. If they pay in property instead of money, the property must be equal in value to the money for which it is substituted. The Van Cleve case makes the shareholder in effect an insurer of the estimated value of the property at the time it is taken. The Kelly case, like most cases on the subject, holds, if the estimate was made honestly and in good faith, that is sufficient, even if the valuation is in fact too high. To say that the property turned in must equal the money for which it stands in actual value does not quite settle the question. It remains to inquire how the fact that it does have the alleged value is to be determined. In the absence of fraud, a fair agreement between the corporation and shareholder as to the value at which the property should be taken is binding upon them. Should it also be binding on creditors of the corporation? Since the creation of the common fund or stock of a corporation is largely for the protection of those who may become its creditors, it may be urged that the corporation cannot, by its agreement, impair their rights. On the other hand, when a shareholder pays in property it is very important to him that he know at what value the property is to be taken, and not be at the risk of having a jury some years afterwards, and in the light of subsequent events, decide that the property was of far less value. The Van Cleve case makes it exceedingly dangerous for a shareholder to pay for his shares in anything but money, but, if the adoption of the doctrine of that case should result in the payment for all shares of stock in money alone, the result would not be detrimental to the public.

Not to be Reported.

The "American Law Review" comments rather sharply on the selection of opinions to be published in official reports, marking others "Not to be Reported." This, of course, increases the sale of unofficial reports, which include all the opinions, and causes many lawyers to buy them in addition to the official reports. But why do judges write opinions that are not to be published? A manuscript opinion, inaccessible to most lawyers, is a hidden danger. If an opinion is worth writing, it is worth publishing.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 42, Parts 4 and 5.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Accession and Confusion.

The right of the owner of timber which is cut from his land by another through mistake, and made into cross ties, is held, in Eaton *v.* Langley (Ark.) 42 L. R. A. 474, to be to recover the cross ties, or, if they cannot be delivered, to have judgment for their value, less the value of the labor and material expended in transforming the timber into them, if that does not exceed the consequent increase in value. If so, his recovery is held to be the value of the property in its new form less the increase.

Actions.

The pendency of an action in a Federal court after removal from a state court is held, in Willson *v.* Milliken (Ky.) 42 L. R. A. 449, sufficient to abate a subsequent action for the same cause in a state court.

The much disputed question of the right of a third person to bring action on a contract made for his benefit is decided in Baxter *v.* Camp (Conn.) 42 L. R. A. 514, by denying the right of a son to recover on a contract made with his mother by her husband, to pay a sum of money after her death to the son.

Arrest.

An officer's declaration that he makes an arrest by authority of the state, and statements by his companions that he is an officer, are held, in State *v.* Taylor (Vt.) 42 L. R. A. 673, to be sufficient to require submission to the arrest.

Bills and Notes.

Payment of the principal of a note to the original payee in the belief that it belonged to him is held, in Hollinshead *v.* Globe Investment Co. (N. D.) 42 L. R. A. 659, to be no

protection to the maker when the note had in fact been indorsed and was in the hands of the indorsee, although coupons from the note had been collected for him after the indorsement, by the payee.

Boulevards.

A boulevard 150 feet wide, of which 60 feet is graded, while the remainder is occupied by grass plots and sidewalks, and which is under the control of park and boulevard commissioners, who constitute a city agency, is held, in Burridge *v.* Detroit (Mich.) 42 L. R. A. 684, to be a street, for the defective condition of a sidewalk on which the municipality is liable as if the boulevard was under the direct control of the common council.

An ordinance declaring a portion of an avenue to be a boulevard, on which the houses shall be used only for residences, is held, in St. Louis *v.* Dorr (Mo.) 42 L. R. A. 686, to constitute an unconstitutional invasion of the right of private ownership of property.

The conversion of a public highway into a pleasure driveway, from which loaded vehicles are excluded, is held, in Cicero Lumber Co. *v.* Cicero (Ill.) 42 L. R. A. 696, to be within the power of the municipal authorities, and not to constitute a taking of property without due process of law or for public use without compensation.

Boundaries.

Describing lands as "lying on the south side" of a non-navigable river, which is also named as a boundary, is held, in Hanlon *v.* Hobson (Colo.) 42 L. R. A. 502, to convey land to the center of the river.

Carriers.

For the death by exposure of an intoxicated passenger who was carried past his station and put off against his wishes at the next station, and then driven out of the depot late at night, when the weather was stormy and dangerously cold, it is held, in Haug *v.* Great Northern R. Co. (N. D.) 42 L. R. A. 664, that the railroad company is liable in damages.

Commerce.

A statute forbidding the sale of goods made by convicts unless they are marked "Convict Made" is held, in People *v.* Hawkins (N. Y.) 42 L. R. A. 490, to be unconstitutional as a regulation of commerce with respect to goods made in other states, and not a valid exercise of the police power as to them.

Constitutional Law.

A curfew ordinance passed without express legislative authority, prohibiting all persons under the age of twenty-one years from being on the streets or alleys of a city after 9 o'clock at night, unless accompanied by parent or guardian, or in search of a physician, is held, in *Ex parte* McCarver (Tex.) 42 L. R. A. 587, to be void for unreasonableness and as an invasion of the personal liberty of citizens.

Corporations.

The statutory lien of a corporation upon its stock for the debt of a stockholder is held, in Aldine Mfg. Co. *v.* Phillips (Mich.) 42 L.R.A. 531, to be one which cannot be foreclosed in equity unless the remedy by judgment and execution is inadequate.

The presence of all the directors of a corporation at a special meeting is held, in Troy Mining Co. *v.* White (S. D.) 42 L. R. A. 549, to make the failure to give proper notice of the meeting immaterial, although the statute requiring notice is mandatory.

The most advanced doctrine declared on the subject of the payment for stock in a corporation by a transfer of property is that of Van Cleve *v.* Berkey (Mo.) 42 L. R. A. 593, holding that the subscriber must pay in property which is actually equivalent to the par value of the stock, and that his good faith and his belief that the property is of that value will not relieve him from liability if it is not in point of fact of such value.

Stockholders of a corporation who attempt to evade the stringency of the laws of their state as to their liability, by forming a new company in another state and exchanging their stock, share for share, are held, in Sprague *v.* National Bank of America (Ill.) 42 L. R. A. 606, to hold the new stock as paid only to the extent that the actual value of the property of the old company exceeded the sum of its indebtedness.

Good faith in the valuation put upon property for which stock of a corporation is issued is all that is demanded in Kelly *v.* Fourth of July Mining Co. (Mont.) 42 L. R. A. 623, under a law which provides that stock may be issued for property to the amount of the

value thereof. And this good faith is held to be such belief as a prudent and sensible business man would hold in the ordinary conduct of his business.

Corpse.

The opening of a grave in a town cemetery by order of town officers, for the purpose of removing a body from a lot which has not been paid for to another part of the cemetery, which is free, is held, in State v. McLean (N. C.) 42 L. R. A. 721, to be within a statute making it a felony for any person to open a grave and remove a dead body therefrom without due process of law or the consent of specified relatives.

Criminal Law.

A boy under fourteen years of age is held, in Foster v. Com. (Va.) 42 L. R. A. 589, to be conclusively presumed to be incapable of committing the crime of rape or of an attempt to commit that crime.

Damages.

The damages which a florist may recover for injury to plants by escaping gas are held, in Dow v. Winnipesaukee Gas & E. Co. (N. H.) 42 L. R. A. 569, not to include any injury to his business reputation on account of sales of damaged plants, as that is conjectural and too remote to be allowable.

Easements.

The right to a way by necessity for land completely surrounded by that of other owners is held, in Ellis v. Blue Mountain Forest Association (N. H.) 42 L. R. A. 570, to be founded on an implied grant and to depend on a previous unity of ownership, so that the right does not arise in case all the land surrounding a tract is bought by another owner, who procures the discontinuance of the highways leading to the tract inclosed.

A pipe line for oil laid underground in a wagon road or crossing under a railroad track, which, by stipulation in a deed to the railroad company, it is required to construct and maintain for the grantor, is held, in United States Pipe Line Co. v. Delaware, L. & W. R. Co. (N. J.) 42 L. R. A. 572, to constitute a trespass even if it does not injure the railroad, as it is not within the easement reserved.

Election Districts.

An act changing election districts after they have once been established by a statute based upon the last census, and before a new census has been taken, is held, in Harmison v. Ballot Comrs. (W. Va.) 42 L. R. A. 591, to be in violation of W. Va. Const. art. 6, § 10, which permits but one apportionment after a census until the next census is taken.

Fire Department Associations.

A statute making a fire department association the recipient of privilege or occupation taxes collected from insurance companies, and imposing on it the duty of disbursing or administering the fund, is held, in Phœnix Assurance Co. v. Fire Department (Ala.) 42 L. R. A. 468, to be not unconstitutional on that ground, where the money is applied to a public use.

Hacks.

An ordinance absolutely prohibiting drummers, runners, hackmen, cabmen, and all other persons from entering a union passenger depot, even with the owner's consent, to solicit custom or patrons, is held, in Cosgrove v. Augusta (Ga.) 42 L. R. A. 711, to be in excess of the power of the city council under the general welfare clause of the city charter.

Incompetent Persons.

The liability of a lunatic on his contract is sustained in Flach v. Gottschalk Co. (Md.) 42 L. R. A. 745, if the contract is fair and reasonable in its terms and was made with one who did not know of the lunacy, when that had not been judicially ascertained, and where the parties cannot be restored to their original situation.

Injunction.

Delay for ten years to contest the right of a rival to the use of a trademark, though knowing that he is expending large sums of money in extending the use of and demand for the article on which the trademark is used, is held, in Old Times Distillery Co. v. Casey (Ky.) 42 L. R. A. 466, to be fatal to an application for an injunction against the use of it.

Insolvency.

A foreign corporation which does not prove its claim or accept a dividend in insolvency proceedings by its debtor in a state where it has an established place of business, and where it is duly served, is held, in Hammond Beef & P. Co. v. Best (Me.) 42 L. R. A. 528, to be unaffected by the debtor's discharge, as the corporation is a person residing in another state.

Labor Organizations.

A provision that none but union labor shall be employed is held, in Adams v. Brenan (Ill.) 42 L. R. A. 718, to be beyond the power of a public corporation, such as a board of education, to make in a contract, as it constitutes a discrimination between different classes of citizens, and is of such a nature as to restrict competition and increase the cost of the work.

Limitation of Actions.

A general statutory provision that the placing of notice in the hands of the sheriff for service shall constitute the beginning of an action is held, in Smith v. Callanan (Iowa) 42 L. R. A. 482, to apply in case of special statutes of limitation, such as that regulating the time for redemption from tax sales, unless there is something in the statute itself to the contrary, or such course will violate some recognized rule of construction.

An attempt to commence an action in a court of record by delivering a summons to the sheriff with intent that it be served, which is made equivalent to the commencement of an action in New York, is held, in Hamilton v. Royal Ins. Co. (N. Y.) 42 L. R. A. 485, to be sufficient commencement of an action on a fire insurance policy under a statute requiring the action to be brought within twelve months after the fire.

Militia.

The national guard or active militia of the state are held, in State, *ex rel.* Madigan, v. Wagener (Minn.) 42 L. R. A. 749, to be neither "troops," within the meaning of the Federal Constitution, nor a "standing army," within the meaning of the state Constitution, and a violation of the rules and regulations of the Military Code is held not to constitute a criminal offense, within the meaning of the bill of rights, but the members may be court-martialed in time of peace.

Public Improvements.

An attempt to impose upon abutting owners the cost of street improvements is held, in Asberry v. Roanoke (Va.) 42 L. R. A. 636, to be in violation of the constitutional provision for equality and uniformity of taxation, and an abandonment of the theory of special benefits, on which alone the abutting property can be lawfully assessed. This decision is in harmony with that of Norwood v. Baker, 172 U. S. 269, which holds that assessments in substantial excess of the benefits in such cases are unconstitutional.

To similar effect is Detroit v. Chapin (Mich.) 42 L. R. A. 638, holding that the cost of a public improvement cannot be assessed on a local assessment district unless the assessment is in proportion to the benefits received.

So, in Weed v. Boston (Mass.) 42 L. R. A. 642, it is held that assessments according to frontage of lots on a strip of land taken for a sewer may be so grossly disproportionate to benefits as to be unconstitutional.

On the other hand, frontage tax assessments are sustained in Ramsey County v. Robert P. Lewis Co. (Minn.) 42 L. R. A. 639, to pay for water mains in streets, but the effect of the Federal Constitution does not seem to have been considered in the case.

And in Rolph v. Fargo (N. D.) 42 L. R. A. 646, the validity of frontage assessments without regard to benefits is sustained in a very elaborate opinion which presents the case in favor of them with unusual strength, but which is in conflict with the now established doctrine of the United States Supreme Court as shown in the case of Norwood v. Baker.

Receivers.

Attachments by creditors in other states after a receiver's appointment, although not affected by a statute of the state of his appointment, dissolving attachments, are held, in Ward v. Connecticut Pipe Mfg. Co. (Conn.) 42 L. R. A. 706, to give the creditor who attaches after notice of the receivership no rights which can be sustained in the court which appointed the receiver, and any advantage gained thereunder must be surrendered before he can share in the receivership. But attachments made in other states before notice are upheld.

An action for injury or death caused by negligence of a receiver of a corporation is held, in Bartlett v. Cicero Light, H. & P. Co.

(Ill.) 42 L. R. A. 715, to be maintainable against the corporation after restoration of the property to it on the receiver's discharge.

Schools.

The reading of extracts from the Bible, emphasizing the moral precepts of the Ten Commandments, as a supplemental textbook used at the close of the sessions, when any pupil may be excused upon application of parents or guardians, is held, in Pfeiffer v. Board of Education (Mich.) 42 L. R. A. 536, to be no infringement of the constitutional guaranties against compelling persons to support or attend places of worship or to pay taxes for the support of teachers of religion, and not to be in violation of the provision against appropriations of public money or property to religious sects, societies, or seminaries.

Statutes.

A code of laws is held, in Central of Georgia R. Co. v. State (Ga.) 42 L. R. A. 518, not to be necessarily a part of a statute adopting it, so as to require all its provisions to be read three times as part of the bill, and the bill is held to refer only to a single subject-matter.

Witnesses.

Belief in God and the sense of accountability to him for false swearing are held, in State v. Washington (La.) 42 L. R. A. 553, to be indispensable to the competency of a witness.

New Books.

"Annotated Corporation Laws of All the States." By Cumming, Gilbert, & Woodward. (L. C. P. Co., Rochester, N. Y.) 3 Vols. $18. This contains the full text of all the corporation statutes of all the states, which are annotated, section by section, with all the decisions of the courts relating to them. The work is surprisingly extensive. There has been nothing like it before.

"The Law of Usury." By James Avery Webb. (The F. H. Thomas Law Book Co., St. Louis,) 1899. 1 Vol. $6.

"Supplement to Hart's Digest Patent Decisions." Annual for 1898. (Callaghan & Co., Chicago.) 1 Vol. $2.50.

"Digest of Mississippi Reports." Vols. 45-73. (Marshall & Bruce Co., Nashville, Tenn.) 2 Vols. $15.

"Law of Legislative Power in Canada." By A. H. F. Lefroy. (Toronto Law Book & Pub. Co., Toronto.) 1 Vol. $9.

"Experience in the United States Supreme Court." By Ex-Attorney General Garland. (John Byrne & Co., Washington, D. C.) 1 Vol. $1.

Recent Articles in Law Journals and Reviews.

"Liability of Public Corporations for Polluting Streams."—48 Central Law Journal, 92.

"Larceny by Trick."—63 Justice of the Peace, 17.

"An Inquiry into the Nature and Law of Corporations." Part I.—38 American Law Register, N. S. 1.

"Gifts and Sales of Intoxicating Liquor Contrasted."—38 American Law Register, N. S. 17.

"Set-Off and Counterclaim."—35 Canada Law Journal, 10.

"Presumptive Negligence of Carriers." Part I.—59 Albany Law Journal, 145.

"The Law of Riot."—59 Albany Law Journal, 148.

"Interference of Third Parties in Contracts of Others."—48 Central Law Journal, 112.

"Consent in Its Relation to Criminal Liability."—48 Central Law Journal, 71.

"Our Rights to Acquire and Hold Foreign Territory."—7 American Lawyer, 47.

"The Law of the Book of Mormon."—24 Law Magazine and Review, 138.

"Mediæval Piracy and the Lords High Admiral of England."—24 Law Magazine and Review, 144.

"The Law as to Sunday Amusements."—24 Law Magazine and Review, 155.

"The Lunacy Laws."—24 Law Magazine and Review, 166.

"State Interference in, (*a*) Contraband Trade, (*b*) Blockade Running."—24 Law Magazine and Review, 203.

"Is the Law of Fixtures Irreconcilable?"—48 Central Law Journal, 132.

"The Incidents of Burial."—63 Justice of the Peace, 65.

"Lawyers in the English Parliament."—11 The Green Bag, 131.

"Good and Bad Law Reporting."—11 The Green Bag, 105.

"Trials in Athens."—11 The Green Bag, 103.

"Liability of Stockholders in Foreign Jurisdictions."—48 Central Law Journal, 192.

"Bicycle Law."—35 Canada Law Journal, 130.

"The Art of Law Reporting."—8 Madras Law Journal, 455.

"What is a Valid Limitation to Cease upon Marriage, or a Condition Void as Being in Restraint of Marriage."—48 Central Law Journal, 172.

"Adams's Science of Finance."—14 Political Science Quarterly, 128.

"Taxation of Securities."—14 Political Science Quarterly, 102.

"The Defects of the Old Radicalism."—14 Political Science Quarterly, 69.

"England and Her Colonies." I.—14 Political Science Quarterly, 39.

"Dependencies and Protectorates."—14 Political Science Quarterly, 19.

"Government of Distant Territory."—14 Political Science Quarterly, 1.

"The Liability of an Infant who Represents Himself of Age."—8 Yale Law Journal, 235.

"Some Aspects of the Indeterminate Sentence."—8 Yale Law Journal, 219.

The Humorous Side.

NOT BRIEF BUT A BRIEF.—A dissenting judge recently began his opinion by saying he "would give brief expression" to his reasons, and then kept on being brief until his opinion exceeded 10,000 words.

ONLY A CALAMITY.—The unlawful combination of elevated railroad companies is held in Illinois to be neither an "accident" nor a "casualty."

LEARNED IN GREEK.—Unmindful of Josh Billings' warning against knowing so many things that are not so, an article on Mendelssohn in an educational journal tells us that the name "Bartholdy," adopted by Mendelssohn's family, means "son of Tholdy" in Greek. The erudite discovery that the prefix "Bar," meaning "son," belongs to the Greek language, must create a sensation among Greek scholars.

HIS IDEA OF VALUES.—A Colorado client asking his attorney to bring a suit for damages against a farm hand who had been recently working his farm specified the following items:

To ruining one team of horses - -	$25.00
To breaking harrow - - -	10.00
To teaching his boy (age eight years) to chew tobacco - - - -	10.00
To causing his wife to have nervous prostration on account of a dun for a bill which she owed - - -	10.00

A STICK IN IT.—In a description of the marvelous products of a Tennessee boom town, a lady eulogist, quoted by the court in a recent case, said: "As to strawberries, I heard the Honorable Benton McMillin remark at a dinner that 'two wouldn't leave room in a tumbler for a stick!'." On this the court said: "By way of annotation, we might add that the full significance of the remark of the Honorable Benton McMillin might not be appreciated by the uninitiated, who might wonder what connection there could be between strawberries in a tumbler and a stick. The inference that we draw from this remark, evidently made with pardonable pride by Mr. McMillin, is that mint is also indigenous to that locality; and, indeed, we could conceive that, with the proper proportions, one strawberry and a stick would have been sufficient."

HAD DECIDED IT ONCE HIMSELF.—A Georgia justice of the peace once took upon himself to charge a jury as follows: "Gentlemen, this is a case which has been tried by me before, and I decided in favor of the defendant." As the jury took the hint and found for the defendant just as the justice had done before, although the evidence was overwhelmingly in favor of the plaintiff, the higher court refused to let the verdict stand. It also commented as follows:

"A justice of the peace is generally a man of consequence in his neighborhood; he writes the wills, draws the deeds, and pulls the teeth of the people; also he performs divers surgical operations on the animals of his neighbors. The justice has played his part on the busy stage of life from the time of Mr. Justice Shallow down to the time of Mr. Justice Riggins. Who has not seen the gaping, listening crowd assembled around his honor, the justice, on tiptoe to catch the words of wisdom as they fell from his venerated lips?

"'And still they gazed,
And still the wonder grew,
That one small head
Could carry all he knew.'"